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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-190334

DATE: November 30, 1977

MATTER OF: Raymond Engineering, Inc.

DIGEST:

1. Allegation that contractor is unable to furnish acceptable units concerns challenge to agency's affirmative determination of responsibility and is not matter for review by GAO except in circumstances not present in instant case.
2. No legal basis exists for allowing unsuccessful bidder's claim for anticipated profits.

Raymond Engineering, Inc. (Raymond) protests an award made to Piqua Engineering Inc. (Piqua), under solicitation No. N00019-76-R-0109, issued by the Naval Air Systems Command (NAVAIR), Washington, D.C.

The procurement was for 1,300 MK-33 safety arming devices. According to Raymond, it believed that it and Piqua would each be awarded a contract for 650 units since each had qualified under prior contracts. Prior to any award, however, units furnished by Raymond under an existing contract failed and required a rework. During this period, Piqua was awarded a contract for 650 units. It was Raymond's belief that it would be awarded a contract for the additional 650 units after acceptance of a full lot under the existing contract. However, NAVAIR, without waiting for Raymond to submit that full lot, subsequently awarded the additional 650 units to Piqua.

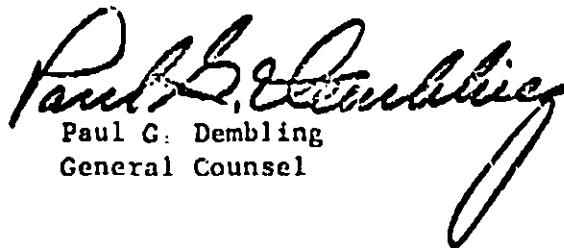
Raymond alleges that at the time of award of the additional units, Piqua was also experiencing acceptance test failures with two lots submitted under Piqua's existing contract. Raymond states that the award of the second 650 units was thus "inequitable" and concludes that because "Piqua is not able to deliver acceptable units" the contract for the 650 additional units should be terminated and that award be made to Raymond for a "comparable" quantity or, in the alternative, that Raymond be paid for profits it would have earned had it been awarded the contract for the additional 650 units.

B-190334

The only issue raised by Raymond's statements and allegations concern the question of whether Piqua can deliver acceptable units, which involves a determination as to Piqua's responsibility. Affirmative determinations of responsibility are not reviewed by this Office except under circumstances which do not appear to be present in this case. Central Metal Products, 54 Comp. Gen. 66 (1974), 74-2 CPD 64; Data Test Corporation, 54 Comp. Gen. 499 (1974), 74-2 CPD 365, affirmed 54 Comp. Gen. 715 (1975), 75-1 CPD 138. While we do consider protests involving negative determinations of responsibility in order to provide assurance against the arbitrary rejection of bids, affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of the procuring officials who must suffer any difficulties resulting by reason of a contractor's inability to perform.

With regard to Raymond's request for profits it would have earned had it been awarded the contract for the additional units, it is well established that there is no authority for compensating an unsuccessful bidder for profits anticipated under a Government contract, even if it could be shown that the bidder was arbitrarily denied an award. 53 Comp. Gen. 357, 363 (1973); Mack Electric Company, B-180392, May 6, 1974, 74-1 CPD 227 and cases cited therein.

The protest is dismissed.


Paul G. Dembling
General Counsel